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COMMISSION ON HUMAN RIGHTS
Working Group on the Right to Development
First Session
8-19 November 1993

ANNOTATIONS TO THE PROVISIONAL AGENDA

Note prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1993/22

Item 1. Opening of the session

1. The first session of the Working Group on the Right to Development will be held at the Palais des Nations, Geneva, from 8 to 19 November 1993 and will be opened by Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights.

2. In accordance with Rule 24 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, the rules of procedure of the Commission on Human Rights shall apply to the proceedings of its subsidiary organs in so far as they are applicable.

Item 2. Election of chairperson/rapporteur

3. Rule 23 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council provides that unless the Commission decides otherwise, its subsidiary organs shall elect their own officers.

Item 3. Adoption of the agenda

4. Rule 7 of the Rules of Procedure provides that the agenda shall be adopted at the beginning of each session, after the election of officers, on the basis of the provisional agenda. The provisional agenda for the present session of the Working Group on the Right to Development is contained in document E/CN.4/AC.45/1993/1.

GE.93-85387 (E)

Item 4. Organization of work

5. The attention of the Working Group is drawn to Commission on Human Rights resolution 1993/22 and the mandate contained therein, as well as the need to report to the Commission at its fiftieth session. Attention is also drawn to paragraph II. 72 of the Vienna Declaration and Programme of Action, in which the Working Group is urged in consultation and cooperation with other organs and agencies of the United Nations system, promptly to formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and to recommend ways and means towards the realization of the right to development by all States.

6. In the light of the above, the Working Group will have to decide on a programme of work for its current session and the forthcoming two sessions. For its organization of work, the Working Group may wish to avail itself of the extensive experience of United Nations bodies and the specialized agencies active in the field of development, both at the international and regional level, as well as that of non-governmental organizations. To this effect and in accordance with the Rules of Procedure, the Working Group may wish to explore the most appropriate ways and means of achieving this, which could include hearings and other consultations, both in Geneva and at the regional level.

7. For the organization of its work, the Working Group may also wish to take into account the following information:

(a) The Commission on Sustainable Development held its first session in New York from 14 to 25 June 1993. In the preparation of the session, attention was drawn to issues relating to the right to development; the report of the Global Consultation on the Right to Development as a Human Right was made available to the Commission members. The report of the first session of the Commission on Sustainable Development is available for consultation by members of the Working Group.

(b) The United Nations Conference on Trade and Development held its eighth session at Cartagena de Indias, Colombia, from 8 to 25 February 1992. The Conference adopted a Declaration entitled "The spirit of Cartagena". The Cartagena Commitment "a new partnership for development", which was adopted during the same session, refers to respect for the human rights, democratization processes and sustainable development. Both the Declaration and the Cartagena Commitment can be made available to the Working Group members, upon request.

8. The attention of members of the Working Group is also drawn to the proceedings of the Inter-Agency Committee on Sustainable Development established by the Secretary-General under the machinery of the Administrative Committee for Coordination, as well as to those of the Committee for Development Planning/High Level Advisory Board on Sustainable Development, which advises the Secretary-General on development questions. The reports of the latest sessions of both organs can be consulted in the secretariat files.

9. Lastly, the attention of the Working Group is drawn to the following forthcoming events: the World Summit for Social Development to be held in Denmark in 1995; the International Conference on Population and Development to be held in Cairo from 5 to 13 September 1994; and the Fourth World Conference on Women to be held in Beijing in 1995.

Item 5. Consideration of Commission on Human Rights resolution 1993/22 establishing the mandate of the Working Group

(a) Obstacles to the implementation and realization of the Declaration on the Right to Development

Obstacles to development

10. Article 5 of the Declaration on the Right to Development provides that States shall take resolute steps to eliminate violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination, which are considered as obstacles to development in preambular paragraphs 9 and 10. Article 3.3 of the Declaration deals with the duty of States to cooperate with each other in ensuring development and eliminating obstacles to development. Article 6.3 refers to the responsibility of States to take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

Obstacles to the implementation and realization of the right to development

11. Apart from the obstacles listed in the Declaration, the Working Group of Governmental Experts on the Right to Development at its eleventh and twelfth sessions (see E/CN.4/1988/10 and E/CN.4/1989/10) considered the following as obstacles to be surmounted for the realization of the right to development: the extensive debt problem and the related issue of the establishment of a new international economic and humanitarian order; neo-colonialism; hegemonism; a severe constraint on resources; inequitable financial and trading arrangements; and the arms race.

12. The Global Consultation on the Right to Development as a Human Right listed a number of obstacles to the implementation of the right to development as a human right (E/CN.4/1990/9/Rev.1, paras. 161-169). It concluded that disregard for human rights and fundamental freedoms and in particular the right to development could lead to conflict and instability, which in turn might undermine the economic conditions needed for development through phenomena such as the diversion of resources to military and police forces, capital flight, the demobilization of human resources, increased national dependence, indebtedness, involuntary migration and environmental destruction. It also concluded that democracy was an essential element for the realization of the right to development and that the failure to implement and respect the principle of democratic government had been shown to present a serious obstacle. Other obstacles listed were: the adoption of inappropriate or

destructive development strategies, especially where financial rather than human considerations prevailed; corruption; the transfer of control of resources located in developing countries to interests in developed countries; the concentration of economic and political power in the most industrialized countries; restrictions on transfers of technology; and the adverse effects of the consumption patterns of the more industrialized countries.

13. The Global Consultation concluded that the non-democratic decision-making processes of economic, financial and trade institutions, as well as the failure to take into account the principles of the right to development in agreements between States and the international financial institutions with regard to external debt repayment and structural adjustment, frustrated the full realization of the right to development and all other human rights.

Obstacles to the implementation and realization of the Declaration on the Right to Development

14. The Global Consultation concluded that lack of communication between specialists in human rights, social development and economics, the United Nations Secretariat, United Nations missions and national Governments, the academic community and non-governmental organizations had impeded full understanding of the Declaration on the Right to Development and its implementation.

15. The replies received from Governments, intergovernmental organizations, United Nations bodies and specialized agencies, and non-governmental organizations in response to requests made by the Secretary-General on 30 May 1988, 11 May 1989 and 12 October 1990 (E/CN.4/AC.39/1989/1, E/CN.4/1990/33, E/CN.4/1991/12 and Add.1) illuminate another obstacle to the implementation of the Declaration, at the conceptual level. While the vast majority of member States have welcomed the adoption of the Declaration on the Right to Development, a number of Member States continue to object to its contents and question its legality. Questions were asked on, inter alia, the individual or collective nature of the right to development, the role of the international community in effecting that right and the justiciability of the right.

(b) Ways and means towards the realization of the right to development by all States

16. The realization of the right to development and the implementation of the Declaration has been a subject of continuous attention since the adoption of the Declaration in 1986.

17. In the academic literature, it has been stated that the issue of implementation or vindication of the right to development should be considered within the framework of international human rights law, which functions to protect the life and physical integrity of human beings and to secure the exercise of other fundamental rights and freedoms; to prevent and eliminate all forms of discrimination; and to secure minimum living conditions. Substantially, human rights range from those which impose limits on State intervention (for example, the right to freedom of thought, conscience, religion and opinion) to those which refine State action (for example, the

right to an adequate standard of living). Procedurally, human rights range from those which can be vindicated by the victims themselves to those which involve a complex web of actors. It has been argued that the normative judicial model suitable for the implementation of individual rights appears inadequate to the implementation of rights pertaining to human collectivities and that therefore the "justiciability" of a right cannot be erected as a condition sine qua non of its existence and recognition as such. For further arguments on the justiciability of economic, social and cultural rights, the attention of the Working Group is drawn to document A/CONF.157/PC/62/Add.5, which contains a contribution submitted by the Committee on Economic, Social and Cultural Rights to the World Conference on Human Rights, as well as to document E/CN.12/1992/SR.11, which contains the summary record of the debate which the Committee had on the subject of an optional protocol to the Covenant on Economic, Social and Cultural Rights. Both documents can be made available to the members of the Working Group, upon request.

18. Concerning the realization of the right to development as a human right, the Declaration on the Right to Development, in its preamble, refers to the relevant instruments of the United Nations and its specialized agencies. Articles 3 and 4 of the Declaration deal with the realization of the right to development, with special emphasis on the responsibilities and duties of States, as well as on effective international cooperation. Article 8 deals with the realization of the right to development at the national level.

19. In 1989 and 1990 reports were prepared by the Secretary-General on the implementation and further enhancement of the Declaration on the Right to Development (E/CN.4/AC.39/1989/1 and E/CN.4/1990/33), while in 1992 a report by the Secretary-General was prepared on the effective implementation of the Declaration (E/CN.4/1992/10) and in 1993 a report by the Secretary-General on the effective implementation and promotion of the Declaration (E/CN.4/1993/16). All these reports are being provided to the members of the Working Group.

20. As regards the realization of the right to development and the implementation of the Declaration on the Right to Development, two levels of action can be identified: at the national level and at the international, intergovernmental level.

Action at the national level

21. The Global Consultation on the Right to Development as a Human Right provided a number of suggestions concerning the realization of the right to development as a human right at the national level, including national policy and development plans, strengthening of juridical systems and of participation.

22. As can be seen from the replies from Governments contained in documents E/CN.4/AC.39/1989/1, E/CN.4/1990/33, E/CN.4/1991/12 and Add.1, some Governments are envisaging or have already taken steps to implement the Declaration at the national level, most of them through the formulation of national development policies. However, many Governments have pointed out the impossibility of separating national development policies from the

international environment and the need for the establishment of an equitable distribution of economic resources and the sharing of economic and political power between north and south.

23. Other Governments have indicated that the implementation of the Declaration is primarily the responsibility of developing countries, but that the international community should lend its support to the efforts of those countries. It has also been pointed out that there is a need for the constant application, particularly by developing countries, of fundamental economic and social reforms, the strengthening of sovereignty over their natural resources, independent economic development and the establishment of a system for the fair distribution of national wealth.

24. Some Governments have underlined the importance of the right to effective participation in all aspects of development. Popular participation as an important factor in development and in the full realization of all human rights has been the subject of three reports of the Secretary-General (E/CN.4/1988/11, E/CN.4/1990/8 and E/CN.4/1991/11), which are being provided to the members of the Working Group.

Action at the international level

25. Discussion of the realization of the right to development at the international level appears to focus on the activities of international and regional organizations in the field of development. It was suggested at the Global Consultation that human rights should become a permanent factor in all economic, social and cultural programmes and development projects of international and regional organizations in the field of development. It was also stated that respect for human rights in general and the right to development in particular would be greatly facilitated and strengthened if a linkage were to be made between human rights and economic issues.

26. The attention of the Working Group is drawn to General Comment No. 2 on "international technical assistance measures (art. 22 of the Covenant on Economic, Social and Cultural Rights) adopted by the Committee on Economic, Social and Cultural Rights in 1990. In the General Comment, the Committee suggests that an increased interaction between the Committee and all United Nations organs and agencies involved in any aspect of international development cooperation, could lead to an integration of economic, social and cultural rights within the framework of international development cooperation. In this regard, in the view of the Committee, two general principles are important: (i) the two sets of human rights are indivisible and interdependent (as reaffirmed by the General Assembly in its resolution 32/130 of 16 December 1977); (ii) development cooperation activities do not automatically contribute to the promotion of economic, social and cultural rights. Copies of General Comment No. 2 can be made available to the Working Group, upon request.

27. From the replies received from United Nations bodies and specialized agencies it appears that most of the organizations in the United Nations system, active in the field of development, work in the spirit of the

Declaration. The Working Group's attention is drawn in particular to the replies from United Nations bodies and specialized agencies contained in document E/CN.4/1991/12 and Add.1.

28. Concerning the realization of the .ight to development, many have pointed out the need to increase the awareness of this right through the dissemination of the Declaration, preparation of a bibliography and the organization of regional training and seminars.

Item 6. Follow-up of the Vienna Declaration and Programme of Action

29. On 23 June 1993 the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action.

30. The preambular part of the Declaration emphasizes inter alia the commitment contained in Article 56 of the Charter of the United Nations; the Universal Declaration of Human Rights as the source of inspiration and as the basis for the United Nations in making advances in standard setting; the task for the international community of removing the current obstacles to and meeting the challenges for the full realization of all human rights; and the determination of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity.

31. The attention of the Working Group is drawn to the following paragraphs in Part I of the Vienna Declaration: paragraph 8 (democracy, development and respect for human rights and fundamental freedoms); paragraph 9 (transition to democracy and economic development of the least developed countries); paragraph 10 (the right to development as established in the Declaration on the Right to Development); paragraph 11 (development and environment); paragraph 12 (alleviation of the debt burden of developing countries); paragraph 13 (creation of favourable conditions to ensure the full and effective enjoyment of human rights); paragraphs 14 and 25 (extreme poverty); paragraph 18 (human rights of women and of the girl-child); paragraph 20 (indigenous people); paragraph 27 (effective framework of remedies to redress human rights grievances or violations); paragraph 30 (continuation of gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights); and paragraph 31 (trade relations and food as a tool for political pressure).

32. The Programme of Action consists of a number of sections of which section A. "Increased coordination on human rights within the United Nations system" and section C. "Cooperation, development and strengthening of human rights" are directly relevant to the mandate of the Working Group. The attention of the Working Group is also drawn to paragraph 98, which refers to the need for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

33. In paragraph 73 of the Programme of Action, the World Conference recommends that non-governmental organizations and other grass-root organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate,

activities and implementation relating to the right to development. The Working Group may wish to consider ways in which this could be achieved.

34. In the preparatory process of the World Conference, regional meetings were organized for the African, Latin American and Caribbean and Asian regions. All three meetings adopted a final declaration and the regional meeting for Africa adopted three separate resolutions on the realization of the right to development (AFRM/6), the full realization of economic, social and cultural rights (AFRM/7), and human rights, democracy and development (AFRM/10). The reports of the regional meetings are contained in documents A/CONF.157/AFRM/14-A/CONF.157/PC/57, A/CONF.157/LACRM/15-A/CONF.157/PC/58 and A/CONF.157/ASRM/8-A/CONF.157/PC/59 and can be made available to the members of the Working Group, upon request.

35. Furthermore, many documents submitted in the preparatory process of the World Conference refer to the realization of economic, social and cultural rights. Document E/CN.4/Sub.2/1993/18/Add.1, which will be made available to the Working Group, contains a listing of these documents, of which the following are of particular relevance to the mandate of the Working Group:

A/CONF.157/PC/60/Add.2	On the relation between development and the enjoyment of all human rights, recognizing the importance of creating the conditions whereby everyone may enjoy these rights, by Mr. Hubert Wieland Conroy
A/CONF.157/PC/60/Add.3	Poverty, marginalization, violence and the realization of human rights, by Mr. Paulo Sergio Pinheiro with the collaboration of Ms. Malak El-Chichini and Mr. Tulio Kahn
A/CONF.157/PC/61/Add.13	Note by the Secretary-General transmitting a report entitled "Human rights, democracy and development: lessons from the field", prepared for the World Conference by the United Nations Development Programme and the Centre for Human Rights
A/CONF.157/PC/63/Add.2	Note verbale dated 16 October 1992 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights, transmitting a paper on the right to development, written by the President of the Iraqi Human Rights Association
A/CONF.157/PC/63/Add.8	Contribution by the American Association of Jurists entitled "Criminalization of violations of the right to development and economic, social and cultural rights"

A/CONF.157/PC/66 and Add. 1	Note by the secretariat: Contribution by the Council of Europe, entitled "Human rights at the dawn of the 21st century"
A/CONF.157/PC/73	Report of the secretariat: report of the Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights
A/CONF.157/PC/75	Report of the Secretary-General: Contribution from the International Centre for Human Rights and Democratic Development, entitled "Human rights, democracy and development"

These documents can be made available to the members of the Working Group, upon request.

Item 7. Consideration of the future work of the Working Group

36. In its resolution 1993/22 the Commission on Human Rights has established the Working Group on the Right to Development initially for a three-year period.

37. The Working Group may wish to draw up a plan for the next two sessions, including proposals for the provisional agenda to be recommended to the Commission.

Item 8. Adoption of the report

38. Under Rule 37 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, the Working Group is to report to the Commission on Human Rights on the work of its session. In paragraph 11 of resolution 1993/11, the Commission requested the Working Group to submit to the Commission at its fiftieth session an initial, comprehensive report on the obstacles affecting the implementation of the Declaration and to continue reporting on its work to the Commission on a yearly basis.

39. In paragraph 72 of the Vienna Declaration and Programme of Action the World Conference urged that the Working Group in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommend ways and means towards the realization of the right to development by all States.

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